



DEPARTMENT OF LAW  
OFFICE OF THE  
**Attorney General**  
STATE CAPITOL  
Phoenix, Arizona 85007

(R75-800)

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July 13, 1976

Mr. William D. Mack  
Deputy Director  
Department of Health Services  
1740 W. Adams  
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Mr. Mack:

You have requested our opinion as to whether the provisions of A.R.S. Title 41, Chapter 6.1 (A.R.S. § 41-1051 et seq.) apply where the Department of Health Services, in order to provide medical services for crippled children, seeks to enter into agreements for the provision of medical care with physicians who are duly licensed in the State, who are board certified in a medical specialty appropriate to the care of children, and who agree to be bound by the Department's payment and other administrative requirements.

A.R.S. § 41-1051 et seq. sets forth mandatory procedures to be followed by a state budget unit before contracting to pay more than one thousand dollars for performance of outside professional services. While physicians' services are "outside professional services" (see Attorney General Opinion No. 75-9), the situation posed by your question is without the intended reach of A.R.S. § 41-1051 et seq.

The Legislature, in enacting A.R.S. § 41-1051 et seq., declared the legislative purpose to be as follows:

The purpose of this act is to prescribe requirements for the selection of outside professional services by any department, agency, board, commission or institution [sic] of the state and to provide for contracts for such services on the basis of demonstrated competence and qualifications for the type of professional services required at fair and reasonable prices. Laws 1973, Ch. 149, § 1 (emphasis supplied).



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The criteria for determining "competence and qualifications" which you intend to use are state licensure as a physical<sup>ian</sup> and board certification in a particular specialty. An individual's capability to meet these criteria will be determined by persons not subject to control by your program and, among individuals who meet these criteria, you do not intend to limit the opportunity to enter into a contract for provision of services. As you expressed it in your letter, "our policy and procedure for these types of services is not to make a selection of a limited number of physicians after a process of competitive bidding but rather to engage the services of any physician who meets the qualifications stated above." (Emphasis supplied).

Where a budget unit will contract with any qualified and competent prospective contractor who desires to enter into the contract, there is no selection and therefore A.R.S. §§ 41-1051 et seq. do not apply. The budget unit, however, cannot place any limitations on who may contract with the budget unit except those limitations otherwise imposed by law. For example, a budget unit wishing to contract for medical services which by law may be performed only by a licensed physician, may require that the potential contractors be licensed physicians. It would be impermissible, however, to require further that the physicians reside in a certain locality or that they possess certain Board certifications, unless those certifications are required by law in order to perform the service contemplated.

You indicated that the physicians contracted with would be those "in the vicinity of Tucson and Phoenix." We assume this geographical limitation is expected to result from voluntary lack of participation by physicians not located in the vicinity of the two facilities at which services will be provided under the Program, rather than from selective exclusion by DHS of physicians located in other areas. In order to remain without the ambit of A.R.S. § 41-1051, the Department must offer to engage the services of all physicians in this state who meet the qualifications established. We assume this is your intent-otherwise, our conclusion to your question would be different from that stated herein.

We must observe, however, that if the Program allows for a selection process by DHS after the initial contracts are signed, then the request-for-proposal requirements of A.R.S. §§ 41-1051 et seq. would have to be met at that time. For example, no selection by the Program would occur if the choice of physicians were made by each patient from among

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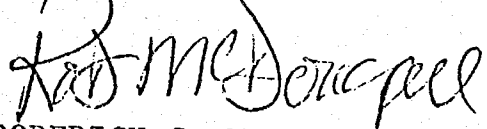
all contracting physicians, with no direct or indirect limitation upon the patient's free choice of physician and no action taken by the Program which might channel the patient's choice. Conversely, furnishing a list which contained the names of some but not all contracting physicians from which the patient might choose a physician would constitute a "selection" by the Program calling into play the provisions of A.R.S. Title 41, Chapter 6.1.

Moreover, if certain physicians were called upon by the Program or offered any sort of advantage not offered to all other contracting physicians, there would exist a selection by the Program requiring compliance with A.R.S., Title 41, Chapter 6.1.

Lest this opinion, based upon legislative intent, be misconstrued at some future date as furnishing a means of evading that intent of A.R.S. § 41-1051 et seq., we have emphasized that the determinative factor is, in the Legislature's words, a "selection of outside professional services by any department, agency, board, commission or institu[t]ion of the state." When no selection by a state agency takes place, A.R.S. Title 41, Chapter 6.1 is not applicable. Whenever, at any point in the process of obtaining outside professional services, there occurs a selection by a state agency by whatever means, the provisions of A.R.S., Title 41, Chapter 6.1 must be followed.

Sincerely,

BRUCE E. BABBITT  
Attorney General

  
RODERICK G. MCDOUGALL  
Chief Counsel  
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